


**STATE OF CALIFORNIA
BEFORE THE
DEPARTMENT OF PERSONNEL ADMINISTRATION**

In the Matter of the Appeal by

Case No. 97-C-0004


Health Records Technician I
For Reinstatement After Automatic
Resignation

Represented by:
Patrick J. Guibao
Labor Relations Representative
California State Employees Association
2020 Challenger Drive, Ste. 102
Alameda, CA 94501

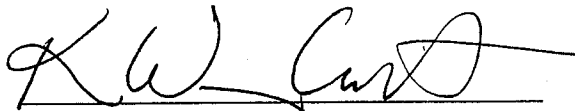
Respondent:
Department of Health Services

Represented by:
Ursula L. Clemons
Staff Counsel
Department of Health Services
Office of Legal Services
714 P Street, Room 1216
Sacramento, CA 95814

The attached Proposed Decision of the Hearing Officer is hereby adopted as the Department's Decision in the above matter.

IT IS SO ORDERED:

December 16, 1997.



K. WILLIAM CURTIS
Chief Counsel
Department of Personnel Administration

**STATE OF CALIFORNIA
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PROPOSED DECISION

This matter was heard before Mary C. Bowman, Hearing Officer, Department of Personnel Administration (DPA) at Sacramento, California, on December 9, 1997.

Appellant was present and was represented by Patrick J. Guibao, Labor Relations Representative, California State Employees Association.

Respondent, Department of Health Services, was represented by Ursula L. Clemons, Staff Counsel, Department of Health Services.

Evidence having been received and duly considered, the Hearing Officer makes the following findings of fact and Proposed Decision.

I

JURISDICTION

Appellant automatically resigned effective June 27, 1997, and filed a request for reinstatement after automatic resignation on October 8, 1997. The request for reinstatement complies with Government Code section 19996.2.

II

WORK HISTORY

Appellant was employed by the Department of Health Services as a Health Records Technician I. At the time of her automatic resignation, she was assigned to the Viral and Rickettsial Disease Laboratory Branch located at Berkeley, California. She worked under the supervision of [REDACTED], Public Health Supervising Microbiologist.

Appellant began working for the State on July 1, 1975.

III

CAUSE FOR APPEAL

Respondent notified appellant in writing on or about October 7, 1997, that effective October 9, she would be considered to have automatically (AWOL) resigned on June 27, 1997, based on her absence without approved leave from June 28 through September 25, 1997. Thereafter, appellant filed her request for reinstatement with DPA.

IV

EXCUSE FOR BEING ABSENT

Appellant was off work from December 28, 1996, through June 27, 1997, and received Non-Industrial Disability Insurance (NDI) benefits through the Employment Development Department based on medical substantiation provided by [REDACTED] MD, and [REDACTED] Clinical Psychologist. During that period appellant consistently provided respondent with copies of medical substantiation from her psychologist. As late as May 28, 1997, she provided substantiation that she was unable to return to work prior to August 1, 1997, because of an "adjustment disorder."

On or about June 12, 1997, appellant's supervisor, [REDACTED], sent her a letter advising her that respondent had been advised that appellant was unable to return to work until August 1, 1997, and that her NDI would run out on June 27, 1997. In that letter, [REDACTED] recommended

that appellant file a written request for a medical leave of absence effective close of business June 27, 1997.

June 28 was a Saturday. Appellant did not contact [REDACTED] and did not report to work on Monday, June 30, 1997. She also did not contact [REDACTED] and/or report for work on July 1 or 2. On July 2, 1997, [REDACTED] mailed another letter to appellant. In that letter she advised appellant as follows:

"I am sorry to see that you are still unable to work according to your clinical psychologist, [REDACTED] Ph.D. until August 1, 1997, due to "an adjustment disorder."

The personnel department has informed me that your NDI expired on 6/27/97. It is your responsibility to request a medical leave of absence from [REDACTED] [the Branch Chief]. The request must contain verification from a medical practitioner of the need for medical leave and the expected date of return. The leave request must be received by this office no later than July 11, 1997.

If you have any questions and I am not available, you may also speak to [REDACTED]

On or about July 3, 1997, before actually receiving the above-letter, appellant submitted to respondent another medical verification from [REDACTED] It stated,

"This is to inform you that at this time it is my professional opinion that [REDACTED] [SS# omitted] will not be able to return to her position as a Health Record Technician I in the Virus Lab. [REDACTED] continues to fear returning to a work environment in which [REDACTED] works. [REDACTED] feels that her employer has been unresponsive to her fears and has been unable to assure her that she would not be assaulted, harassed, or retaliated against. [REDACTED] has an ongoing need for further psychological treatment to address these and other work-related concerns."

The medical verification did not provide an expected date of return to work.

Appellant did not contact [REDACTED] and did not submit a written request for a medical leave of absence after she received the July 3 letter.

She testified she spoke with [REDACTED] sometime around the week of July 18. [REDACTED] confirmed that they had a conversation. Both also confirmed she said she was not coming back to work right then because she "need[ed] to heal." They also discussed possible positions to which she might return, other than in the Laboratory. They spoke again a few days later. At that time there were no positions available, which [REDACTED] confirmed.

Both [REDACTED] and appellant testified she did not ask for a leave of absence during the conversation.

On September 12, 1997, [REDACTED] sent a third letter to appellant. In it she stated, "On July 2, 1997, a letter was sent informing you that it was your responsibility to request a medical leave of absence. To date no such letter has been received. The VRDL needs a written request from you either requesting a leave of absence or resignation. The letter should be addressed and sent to [REDACTED]. You must include a letter from your physician if you are requesting a medical leave.

[REDACTED] must receive this written response by September 23, 1997, or other appropriate personnel action will be taken.

If you have any questions and I am not available you may also speak to [REDACTED]."

Appellant did not file a written request and did not resign. She did not call [REDACTED] with any questions. She claimed she spoke with another employee [REDACTED] who told her [REDACTED] was out of the office. She did not leave any voice mail message for retrieval by [REDACTED]. Otherwise she did not respond.

Two medical documents were placed in evidence by appellant. One document was a Report of Medical Examiner for NDI. According to that report on May 5, 1997, [REDACTED] certified appellant was unable to return to work until January 1, 1998, because of "generalized anxiety." The other document was [REDACTED] July 3, 1997, medical report (referred to above) stating appellant was unable to return to work in her position as a Health Record Technician. (The latter contained no return to work date.)

These documents are consistent with appellant's testimony that she was unable to work as a Health Records Technician I in the Laboratory during the period June 28 through September 25, 1997.

Accordingly, it is found that appellant had valid excuse (illness) for being absent from work.

V

REASON FOR NOT OBTAINING A LEAVE OF ABSENCE

As set forth above, on three separate occasions respondent invited appellant to request a medical leave of absence. She was mailed certified letters to that effect on June 12, 1997, July 2, 1997, and September 12, 1997. Appellant denied that she received the June 12, 1997, letter.

(There was no evidence that it was misdirected.) She acknowledged receipt of the July 3 and September 12 letters but claimed she did not see a reason to request a leave of absence and was confused by the letters.

After twenty-three (23) years of State service, appellant is presumed to know that she cannot be indefinitely absent from work without leave. The letters clearly directed her to file a written request for leave.

It is concluded appellant did not have a satisfactory explanation for not requesting leave.

VI

READY, ABLE AND WILLING

Appellant presented undisputed evidence that she was unable to work at the time of her resignation because of a medical (psychiatric) illness. She did not present any current medical evidence to indicate the medical opinions of her physician and psychologist changed after her resignation. Appellant claims she is currently able to return to work in the Laboratory, but that claim is inconsistent with her latest medical reports which she placed in evidence.

* * * * *

PURSUANT TO THE FOREGOING FINDINGS OF FACT THE HEARING OFFICER MAKES THE FOLLOWING DETERMINATION OF ISSUES:

Government Code section 19996.2 provides an automatically separated employee with the right to file a request for reinstatement with the Department of Personnel Administration. Section 19996.2 also provides,

“Reinstatement may be granted only if the employee makes a satisfactory explanation to the department [DPA] as to the cause of his or her absence and his or her failure to obtain leave therefor, and the department finds that he or she is ready, able, and willing to resume the discharge of the duties of his or her position or, if not, that he or she has obtained the consent of his or her appointing power to a leave of absence to commence upon reinstatement.”

Pursuant to *Coleman v. Department of Personnel Administration* (1991) 52 Cal.3d 1102, the Court held that an employee terminated under the automatic resignation provision of section 19996.2, has a right to a hearing to examine whether he/she had a valid excuse for being absent, whether he/she had a valid reason for not obtaining leave and whether he/she is ready, able, and willing to return to work. DPA is *not* charged with examining whether the appointing power acted properly with regards to the actual termination. Further, appellant has the burden of proof

in these matters and must prove by a preponderance of the evidence that he/she had a valid excuse for her absence and failure to obtain leave and that he/she is currently able to return to work.

Appellant proved she had a valid excuse for her absence, which was that she was ill between June 30 and September 25, 1997. She did prove that she had a satisfactory reason for refusing to request a medical leave of absence. Also, despite her desire to return to State employment, she did not prove by a preponderance of the evidence that she is currently able to return to work as a Health Records Technician at the Viral and Rickettsial Disease Laboratory Branch in Berkeley.

Accordingly, appellant's request for reinstatement must be denied.

* * * * *

WHEREFORE IT IS DETERMINED that the appeal of [REDACTED] for reinstatement after automatic resignation effective June 27, 1997, is denied.

* * * * *

The above constitutes my Proposed Decision in the above-entitled matter and I recommend its adoption by the Department of Personnel Administration as its decision in the case.

DATED: December 15, 1997



MARY C. BOWMAN
Hearing Officer
Department of Personnel Administration